CAPITAL IMPROVEMENT PROJECTS OVERSIGHT COMMITTEE MEETING MINUTES July 7, 2008

The meeting was called to order at 5:37 p.m.

1. Attendance - See Attendance Sheet attachment.

2. Review and Acceptance of Minutes

ACTION: Acceptance of Minutes of the June 2, 2008 CIPOC Meeting

Correction: Israel Magrisso is listed in Section 2 of the Minutes as "Retired" Engineer.... He is

not retired.

MOVED: Israel Magrisso 2nd: Stacy Kilroy

Note: The June 2, 2008 meeting was considered organizational in nature and will not count toward the total number of absences against those who were not in attendance.

Three members were sworn in by Raul Aguila of the City Attorney's Office:

Erik Agazim

Elizabeth Camargo

William Goldsmith

3. Old Business

Review of Legal Guidelines

Presented by Raul Aguila, City Attorney's Office

raulaquila@miamibeachfl.gov

Mr. Aguila briefed the new members of the Committee on Government in the Sunshine Law and legal guidelines for City Committees. They were asked to contact his office for further discussion.

4. Procurement of Services

Presented by Gus Lopez, Procurement Division Director

<u>quslopez@miamibeachfl.gov</u>

Mr Lopez gave an overview of the City of Miami Beach Procurement process, focusing on selection of A/E firms and the construction contractor selection process.

Procurement in Florida Municipalities is governed by Florida Statutes. (section 287.055) applying to A/E. Planners and Designers (Consultants Competitive Negotiation Act). The basic steps are as follows:

There are specific guidelines in the statute as to the criteria that municipalities must use in the competitive selection process

- <u>First an agenda item for a project is brought to the City Commission</u> (incorporates scope of services and selection criteria. Weight is assigned to each item within the selection criteria). The Mayor and City Commission are briefed and they authorize the issuance of a Request for Qualifications (RFQ).
- <u>RFQ Issued</u>. Florida Statues mandate that the municipality focus on the qualifications of the firms as part of the selection process. Florida Statutes also prohibits any discussion of fees at this stage. We cannot ask the competing firms what their fees are. (Discussion of fees only takes place during the negotiation phase). The issuance of an RFQ is noticed through two notification services.

- <u>Pre-qualification submittal meeting</u>. This is held for those interested firms to brief them on the process, stressing the prevailing ordinances and the time schedule for the RFQ, and address questions.
- Firms submit qualification packages.
- <u>Evaluation Committee</u>. The City Manager appoints members for the Evaluation Committee. This committee is an advisory committee to the City Manager. The Committee reviews the submitted proposals, engage in Q&A with the candidates and are tasked with ranking no less than three firms. The top-ranked firm is recommended to the City Manager.
- The City Manager reviews the recommendation of the committee, and, in turn, will make a recommendation to the Mayor and City Commission, which is to:
 - o Accept the recommendation and rankings
 - o Enter into negotiations with the top-ranked firm and if not possible, to enter into negotiations with the second-ranked firm
- <u>Negotiation Phase</u>. When the Commission authority is granted, the Manager appoints individuals to negotiate an agreement. For the most part, the agreement is negotiated by the CIP Office.
 - o Proposed fees
 - o Fee schedules
 - o Schedules
- <u>Agreement brought back to City Commission for approval</u>, after careful review from the City Attorney's Office.
- When all parties agree to the executed contract, the A/E firm goes to work.

Q&A:

Erik Agazim asked for clarification on the process, that fees are not discussed until the top firm is selected. That is correct.

William Goldsmith asked if the City could develop their own guidelines for establishing fair fees prior to commencement of the bidding process. When the response came back that the City is prohibited from asking about fees prior to the negotiation phase, Mr. Goldsmith responded by stating that he would not ask the candidates for their fees, but rather tell them in advance what the City expected to pay, that was considered in a commercially reasonable realm and would also add the expectations of a timeframe. Including \$\$ for a retainer, \$\$ for production of schematics and \$\$ when the work is completed. (50% through CDs).

The City is bound by guidelines not to discuss this during the bidding phase, but can present a budget for the entire project to the candidates prior to bid. The items mentioned come up during the competitive negotiations process.

Commissioner Weithorn developed Mr. Goldsmith's question into a motion to recommend to the administration that the Committee develop a set of "standard cost guidelines" based on project scope for each project. She recommended focusing on one aspect of a project at a time (A/E, Different commodities). Commodities, for example, have fluctuating costs, she warned. Commissioner Weithorn added it is staff's job to come up with cost, not the committee's. The Committee makes recommendations.

Christina Cuervo pointed out that the City does try to standardize costs in advance so that A/E firms know up front that there is a maximum on vertical and horizontal construction costs.

Jorge Cano, Assistant Director of CIP explained that typically A/E fees run a percentage of the total job. Typical fee for ROW program is 8 – 10% of overall project. There are components that are not part of the process in the private sector, but are part of the public construction process. The project development process involves community meetings, which add to the cost. The A/E fees on the Flamingo Park project were negotiated down to about 7%.

Ms. Cuervo asked if special industry knowledge was a consideration in determining what the City is willing to pay for A/E fees. Mr. Cano explained that those that bid for public projects are bidding for a single event, with no guarantee for repeat business. Mr. Cano used examples of the RFP process explored by the City of Hialeah and the City of Miami. These examples include firms that submit their qualifications in order to be included on a rotating list. If they do not perform, they are removed from the list. This is similar to the City of Miami Beach's JOC system.

Mr. Cano discussed briefly the various procurement options in which the City can engage. The City has moved from Design-Bid-Build to others such as Design/Build, Design/Bid and CM@Risk, as well as JOC. These options aid in transferring risk and compressing timeline.

- Design-Bid-Build has been the standard procedure, which takes the longest because a
 consultant has to be secured, then have the design worked on, then go through bid
 and award session, award it, find a contractor to award and then take the project to
 construction.
- Design/Build is advantageous because a contractor is hired and the contractor in turn
 hires the engineer and they work as a team. This is procured through an RFP, typically
 after a City-hired consultant prepares design documents outlining scope and budget.
 When the response to the solicitation comes in, there is an opportunity to discuss costs,
 scope changes, phasing etc.
- CM@Risk: City will hire a consultant and construction manager to value-engineer a project from the beginning.

Stacy Kilroy asked if the actual contract to be negotiated is part of the let-go documents. As a standard practice, Mr. Lopez answered, the answer is no. Sometimes firms have asked for a copy of a sample agreement during the selection process for A/E firm. We have provided it as an addendum to the documents.

Ms. Kilroy suggested that the standard contract be included so that the A/E firms know what to expect as far as the requirement of the number of community meetings and other details that are expected in the process. Although the terms and conditions are included within the RFQ document, Ms. Kilroy pointed out that the firms considering a bid would hand the agreement to their attorneys and project managers to make the decisions.

MOTION: Recommendation to include the boilerplate contract in the RFQ documents sent out

to A/E firms during the selection process.

Commissioner Weithorn advised sending this electronically. (The Procurement Division is working on making all material available electronically).

Moved by Stacy Kilroy, 2nd: Christina Cuervo - MOTION PASSED

ACTION FOR STAFF: Report on how this is implemented.

William Goldsmith commented that on all the projects he has developed, he knew at the outset what he was willing to pay. By giving firms a rough idea of the price, he got better and quicker feedback. He suggested trying that on the next CIP project.

He asked, by way of developing a motion, that the Committee develop a reasonable pricing format for CIP projects by implementing this control (spending ceiling) on select new projects as a test for this threshold list. Rather than simply present an overall budget with bid documents, but to also include line items with cost thresholds for certain items to allow contractors to develop budgets more effectively. Mr. Goldsmith feels that the current City bid process does not present realistic budgets at the outset, and associated prices may not be realistic, and that the projects do not necessarily address the needs of the neighborhoods. All this, his says, is done in a manner that is not commercially reasonable.

Commissioner Weithorn assisted by suggesting that the committee implement a pilot, to attempt a new philosophy to a project to establish pricing guidelines. Appoint a committee member to work with CIP as a sub-committee of one. That sub-committee would meet with CIP in more detail, and bring the results back to the Committee.

Mrs. Cuervo asked if there were standard items on the JOC unit price catalog. This includes over 140,000 pre-price items of construction costs in the South Florida market, updated every 18 months. Ms. Cuervo suggested that the JOC manual be used as a preliminary guideline in the development of the pilot program.

ACTION FOR STAFF: Copies (CDs) will be provided to Committee members who request it.

MOTION: The Committee will embark on several pilot projects in implementing the new philosophy of presenting the bidding firms with cost guidelines.

Israel Magrisso asked for clarification as to what the Committee is seeking with price thresholds. He noted that although the discussion began over consultant fees, Mr. Goldsmith was mentioning construction costs.

(Mr. Goldsmith's mic was turned off, so his response was not recorded)

Mr. Magrisso stated that the Design/Build system as it is implemented now, addresses the concerns that Mr. Goldsmith addressed. He stated that the contractor works with the designer to establish pricing that will be most economically beneficial.

Edward Tobin, City of Miami Beach Commissioner, spoke at the gallery podium. He thanked the Committee and specifically thanked Mr. Goldsmith for contributing his time and efforts to evaluate City projects. Comm. Tobin detailed his concerns over fees associated with several CIP projects, specifically the Normandy Shores Golf Course Clubhouse, stating that the

Architect established costs that were in excess of \$450 per square foot for construction costs, when it is his opinion based on prevailing commercial construction, that costs should be less than \$250 per square foot.

Mr. Magrisso stated that in a design/build project, the contractor, not the architect, establishes the construction costs.

Commissioner Tobin stated that the City presents a budget first, and then the bidders base their costs on that budget. He also discussed the Flamingo Park Tennis Center construction. The Commission directed CIP to complete the tennis courts in March, 2006. He is dissatisfied with the progress to date on this part of the project. He also stated that the City Manager is committed to improving the CIP process.

Mr. Goldsmith asked for numbers to be reiterated. A/E fees for the NSGC Clubhouse were \$400,000 and an additional \$131,000 for an assisting consulting firm.

Commissioner Weithorn asked for details of the NSGC Clubhouse project to be sent to all committee members.

ACTION FOR STAFF: History and budgeting details sent to committee members.

Ms, Kilroy asked for definition of the scope of the pet projects and what the committee is asked to determine (professional fees, unit pricing, extra fees, etc...)

Mr. Goldsmith said that each project is unique with unique problems to be addressed. He has already done the work for three projects and wanted to present to the committee what he discovered. He feels that the City has gone about projects in a manner that was not in the best interest of the City.

Ms. Cuervo asked if the City was able to implement any of the suggestions that Mr. Goldsmith had made or if it was too late.

Mr. Goldsmith explained that he had met with CH2MHill (the engineering firm that conducted the drainage studies on Miami Beach and designed the Bayshore project), an engineering firm with which he works on Wal-Mart renovations. He discovered that the drainage studies assumed that there was no contribution from private swale renovations to the street flooding. This, he says, is an incorrect assumption that is the basis of the rest of the project.

Ms. Kilroy asked further clarification on the motion: That this is an investigation into various projects so that errors are discovered and corrected before they go into design.

"Pet Projects" (As applied to previous motion)

Applied to four projects:

- Lake Pancoast (Bayshore 8-C)
- Sunset 1&2 (Bayshore 8-B)
- Nautilus Drainage (Orchard Park emergency change order)
- Normandy Shores Golf Course Clubhouse

These will be taken on by various members of the Committee in individual sub-committees of

one. Committee members are to volunteer to take on projects on the sub-committee level. If more than one Committee member attends, the meeting will have to be noticed at least 7 days in advance, in compliance with Sunshine.

MOTION PASSED. (One opposed)

STAFF ACTION: Assist committee members in planning sub-committee meetings.

Raul Aguila explained that any communication will be done through the CIP Office in order to comply with Sunshine Laws.

Mr. Goldsmith wants pet projects to be brought to Committee as they come up so that the Committee could be involved as early as possible.

a. & b. Review of Sample A/E Agreement and Contractor Agreement

Stacy Kilroy asked how the Committee could set pricing structures to all ranges of the types of documents that are generated, and apply them to a lump sum contract. (Her reference was the contractor agreement).

Raul Aguila explained that his understanding of what Mr. Goldsmith was proposing was that the pricing structure would be presented in the bid documents. This would be similar to JOC, including unit prices with documents.

Ms. Kilroy noted that prevailing unit prices are mentioned in the contracts. How are these prices determined, as it appears that there are structures already set up?

Mr. Cano answered that benchmarking is provided by the consultants who serve as project managers. The City has an idea of the market and current costs.

Ms. Kilroy knows of several good methods by which to monitor pricing that are already in place.

She also asked about the construction schedule. This is developed following the issuance of the first NTP, as explained by **Raul Aguila**. The schedule becomes part of the contract after the contract is executed. After every request for payment is process, the contractor submits a report detailing the portion of work completed and a look-ahead schedule.

Tim Hemstreet, Assistant City Manager, clarified that when baseline schedule is submitted, the only way that can be amended is through a change-order. For example, if a contractor is behind schedule and submits a pay-application, they can be charged for liquidated damages unless a change order is implemented.

Mr. Goldsmith asked to make a motion that the CIPOC can advise the City on every contract over \$5000 before it goes out.

Raul Aguila explained that this board, as an advisory board, can make any recommendation

to the Administration and Commission. The City rarely agrees to changes in terms and conditions, as they are boilerplate documents. There is a concern of time, in that the CIPOC only meets monthly, which may slow down processes. The City is currently reviewing, as it does occasionally, the current front-end documents. The Committee may want to have say on that. Mr. Aguila will advise the Committee on when the meetings to update these documents will take place.

STAFF ACTION: Advise Committee on when the City will be holding meetings to review frontend documents.

Christina Cuervo pointed out that the old board (GOBOC) routinely received copies of contracts before they went out and was under the impression that this committee would also review contracts before they are awarded. The City will make available the contracts prior to them going to the City Commission.

ACTION FOR STAFF: Bring contracts to CIPOC for review prior to presentation to Commission. If time constraints don't provide for that, please advise the Committee on status.

Gus Lopez explained that during the evaluation process, because the City has adopted certain ordinances, and the Committee should be aware of the Cone of Silence and Lobbying registration requirements.

Mr. Aguila clarified that the Committee wants to see contracts once they have been negotiated but before they go to Commission.

Mr. Goldsmith wants to be sure that the City doesn't overpay and that opportunities are not missed.

Erik Agazim pointed out that if large budgets are presented, contractors may take advantage. For example, if a contract for painting a building is made available at \$2 million, but a contractor knows that he can do it for \$1 Million; he would still bid at \$2 Million and make a 200% profit.

Mr. Lopez explained that public construction is under additional constraints and guidelines that must be followed such as the David/Bacon Act that provides for minimum labor standards and minimum pay for employees for projects that utilize federal funds of \$2000+. As another example, the equal benefits domestic partnership coverage is a condition of doing business with the City, and costs more for the contractors.

Mr. Goldsmith's request was TABLED. Commissioner Weithorn wants to work out with staff the best way to utilize the committee to review contracts.

Mr. Goldsmith volunteered that his goal is for the City to get the best commercially reasonable prices.

5. Procurement Options

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TABLED UNTIL THE NEXT MEETING

6. Best Value Procurement Selection Process

TABIED UNTIL THE NEXT MEETING

7. Review of Priority Basins

TABLED UNTIL THE NEXT MEETING

8. Vote on August Meeting

MOTION: To take a break along with Commission for the month of August M – Commissioner Weithorn $2^{\rm nd}$ – (not clear who seconded this motion) MOTION PASSED

There will be no August meeting, but the sub-committees working on the pilot projects will begin their work, meeting with staff as arranged.

There may be as many as three sub-committee meetings before the September meeting. The CIP Office will coordinate with members in organizing and assisting with these meetings.

ADDITIONAL STAFF ACTION: Commissioner Weithorn asked for a copy of the Capital Budget, once ready, to be given to the Committee.

ADDITIONAL STAFF ACTION: Advise the Committee of any CIP contracts to come before the July Commission meeting. (The South Pointe Streetscape Phase II award will be before the July Commission. Once the selection of the vendor is made by Commission, information will be brought back to Committee, due to Cone of Silence restrictions).

ADDITIONAL STAFF ACTION: As the Capital Budget process is finalized, CIP is asked to bring those projects that are coming online to the Committee.

ADDITIONAL STAFF ACTION: Update Web Site.

The next meeting of the Capital Improvement Projects Oversight Committee will be held at 5:30 pm, Monday, September 8, 2008 (NOTE: Due to Budget Hearing held Sept. 8, the meeting date was moved to September 15, 2008).